

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL RAIHALA,

Plaintiff,

Case Number: 07-14083

v.

HONORABLE AVERN COHN

CASS COUNTY DISTRICT JUDGE,

Defendant.

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ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

Plaintiff Michael Raihala (Plaintiff) a state prisoner, filed a complaint for declaratory relief. Plaintiff proceeded without prepayment of the filing fee under 28 U.S.C. § 1915(a)(1). The Court dismissed the complaint under 28 U.S.C. § 1915(e)(2) because it failed to state a claim upon which relief may be granted. See Order of Dismissal filed October 11, 2007. Plaintiff filed a notice of appeal.

Before the Court is plaintiff's Motion for Certificate of Appealability. A certificate of appealability only applies to habeas corpus proceedings under 28 U.S.C. § 2254 or 28 U.S.C. § 2255. 28 U.S.C. § 2253; Fed. R. App. P. 22(b). Plaintiff's complaint, however, invoked the Declaratory Judgment Act and 42 U.S.C. § 1983. A certificate of appealability is not necessary. Accordingly, plaintiff's motion for a certificate of appealability is DENIED.

SO ORDERED.

Dated: February 07, 2008

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Michael Raihala, 221559, Ryan Correctional Facility, 17600 Ryan Road, Detroit, MI 48212 on this date, February 7, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160